

An Offer the EU and UK Cannot Refuse

II: FAQ

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We have received many comments and questions to our [Proposal on avoiding a No-Deal Brexit](#). The following are the most frequently asked questions with our replies.

Does the proposal create a customs union between the UK and the EU?

No, in contrast with the current Backstop, this proposal does not introduce a customs union between the UK and the EU. The proposal avoids the introduction of a physical border in Northern Ireland, in line with the spirit of the Good Friday Agreement, while it allows the UK to pursue its own trade policy with other countries and to have its own external tariff scheme.

Does the proposal apply to Northern Ireland only, or to the whole UK?

The proposal applies only to traffic in goods entering/exiting the Republic of Ireland through the border with Northern Ireland whatever their origin in the UK. It does not apply to trade between the Republic of Ireland or any other Member State with the rest of the UK. However, the proposal could work as a template for future trade relations between the UK and the EU.

Under this proposal, will goods be subject to customs duties?

Yes, goods crossing the Northern Ireland border would be subject to duties in accordance with UK and EU laws, but without the need to introduce customs controls at the border.

Where would customs controls take place?

Customs controls and payment of duties, would take place at Standard Centres located away from the border in both Northern Ireland and the Republic of Ireland. In addition, spot checks, as envisioned too in the current Backstop and joint inspections (by Irish/EU and UK officials) would take place for specific regulatory matters (eg veterinary controls, food safety) as they do already today.

Is this, as some voices from some EU have argued, just another 'trust me' approach?

No. Obviously trust is important and needs to be rebuilt. Under the Backstop as currently proposed, the EU would have to rely on the integrity of the UK legal system, backed up by EU verification procedures.

This new proposal incorporates and builds on the very same procedures. No solution will work without a modicum of trust between the two parties. The British

Government objects to the backstop because it is asymmetrical and of indefinite duration, obliging the UK to follow EU rules.

Our proposal is based on *symmetrical* arrangements between the two sides creating a mutual incentive for ensuring its success.

How would customs and regulatory standards be enforced in the absence of a physical border?

The UK will incorporate EU law on goods as a matter of UK law for this purpose. It will be an offence under UK law to export through Northern Ireland goods which do not comply with EU regulatory standards. In certain cases criminal liability might attach. In the same way, it will be an offence under Irish law to export through Northern Ireland goods not complying with UK regulatory standards. In addition, all the verification procedures required by the EU under the current Backstop will all be incorporated on a reciprocal basis.

Does this mean that someone from the North taking a Christmas present to relatives in, say, Dublin will be subject to criminal sanctions?

Obviously not. The Law is not an ass neither is the legislator. Criminal sanctions we expect would apply to commercial traders and shipping companies who knowingly violate the law. It will be up to both parties to modulate the regime of sanctions in accordance with common sense.

Will the Court of Justice have jurisdiction to resolve disputes?

Yes, but only regarding the interpretation of EU standards, as incorporated into UK law, when applied to UK exports to the EU internal market through Northern Ireland. Also, in order to ensure symmetry between both parties, Irish courts will have jurisdiction to make preliminary references to the British courts on issues of interpretation of UK law, as applied by Irish exporters sending goods to the UK market through Northern Ireland.

What happens with small frontier traffic between Northern Ireland and the Republic of Ireland?

Quantitative thresholds would be introduced to waive duties on insignificant import/export of goods over the border, in the same way that excise duties are currently waived under EU law for small personal quantities of tobacco and alcohol. Consumers will be able to carry on purchasing goods on both sides of the frontier.

How will this work for livestock trade in Ireland?

There are already “all island” rules in place in both the Republic and Northern Ireland, reflecting the fact that their epidemiological status is the same (and different from Great Britain).

What about smuggling? Will stiff criminal penalties envisaged under your plan be a sufficient deterrent?

Smuggling exists along other EU borders. The main interest is not in small time smuggling of a few cigarette cartons or mobile phones, but in large volume trade which causes real harm. The regime envisaged under our proposal will certainly take care of that.

Smuggling occurs when there is a disparity of prices across the border. The principal reason for that is typically differentiated taxation on goods (such as VAT, excise taxes etc.) This differentiated pricing could exist also under the current Backstop and it is simply fanciful to think that simply having a customs and regulatory union with the EU can prevent smuggling.

This proposal deals more effectively with the problem than the current Backstop; making smuggling an offense in both “exporting” and “importing” country will lead to better cooperation between the law enforcement of the Republic and the UK.

Does this proposal require an amendment / repeal of the Withdrawal Agreement which the EU says it will not reopen?

No. There are several ways of enacting this proposal without altering the Withdrawal Agreement (WA) as outlined in our Proposal. Our proposal could be agreed by the Heads of State or Government of the Member States with the status of a legally binding international agreement qualifying the WA and not touching any of its material provisions. . Alternatively, the proposal could be introduced in the Political Declaration, with an agreement that the relevant provisions in the Political Declaration have the same legal status as the WA. Several leading European politicians have already indicated a willingness to modify the Political Declaration. This is the kind of thing that if the lawyers are tasked to find a solution one will be found, as our proposal illustrates.

Could other third countries request a similar treatment in their trade relations with the EU?

No, this proposal can only apply to a third country that has been a Member State of the EU for several decades. Why? Because in order to rely on domestic remedies and joint controls between a Member State and a third country, the EU must have a high degree of trust in the legal system and the officials of that third country. That is only the case of a former Member State with a legal system having effectively enforced EU law for many years.

Is this proposal compliant with WTO obligations?

It is widely expected that, as a minimum, the EU and the UK will agree on a basic FTA in goods for their future relations. This proposal prepares for that agreement and would therefore be covered by Article XXIV GATT. Even absent that, the Proposal does not modify the current terms of trade between the Ireland/EU and the UK (customs duties, etc.) and would not trigger the Most Favoured Nation obligation to extend it to other countries. There are already differences between countries in the procedures in relation to, say, the verification of regulatory compliance of goods entering their territories and this Proposal is unlikely to trigger a credible MFN

challenge. The UK and the EU, two jurisdictions whose legal systems have been intertwined for 46 years, can easily justify such differences in procedures given that the terms of trade will be the same for all partners.

